IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6074 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

A.B. PANDYA

Versus

STATE OF GUJARAT

Appearance:

MS SEJAL K MANDAVIA for the Petitioner.

Ms.Sonal Vyas, Assistant GOVERNMENT PLEADER, for Respondents No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/03/2002

ORAL JUDGEMENT

Rule returnable today. Ms.Sonal Vyas, learned AGP, waives service of rule on behalf of the respondents.

With the consent of the parties, the matter is taken up for hearing today.

The grievance of the petitioner is that without giving him any opportunity of being heard, he was relieved from the services by the order of the Home Guard Commandant, Jamnagar City. The case of the petitioner is that, at the relevant time, he was discharging his duty as a Member of the Home Guard since last 15 years. However, his services were treated to have been terminated by an order dated 1.11.2000. The say of the petitioner was that the said order was never communicated to him. However, as per the order at Annexure `B', page 13, the petitioner was informed by the Commandant that the services of the petitioner were already terminated by an order dated 1.11.2000 and, therefore, he was asked to deposit the identity card and dress, which were given to him while he was in service. The petitioner, thereafter, filed an appeal before the Commandant General, Home Guard, Ahmedabad. The said appeal is rejected on the ground that it is given at a belated stage and after the prescribed period of limitation. The said order dated 31st May, 2001 is annexed at page 12, Annexure `A'.

Being aggrieved by the aforesaid order, this Special Civil Application has been filed by the petitioner.

At the time of hearing of this Special Civil Application, it was argued by the learned Advocate for the petitioner that since the petitioner had not received the original order terminating his services, his appeal was required to be entertained on merit, without rejecting the same on the ground of limitation. Ms.Sonal Vyas, learned Assistant Government Pleader, has, however, argued that since this is not an order by way of punishment, the appeal itself is not maintainable.

Considering the facts and circumstances of the case, I am of the opinion that the appeal of the petitioner is not entertained only on the ground of limitation, as, according to the appellate authority, the same is filed after the period of limitation. In the facts and circumstances of the case, the appellate authority should have decided the appeal of the petitioner on merits, instead of throwing it away on the ground of limitation. The petitioner has already averred in the petition that the petitioner came to know about the order as per the communication dated 23rd February, 2001, produced at Annexure `B' and the appeal was filed on 27th February, 2001. It is submitted by the learned Advocate that accordingly the appeal was filed within time. However, apart from the aforeaid fact whether it

was filed within time of not, the authority should have decided the appeal without rejecting the same on the ground of limitation. The petition is accordingly allowed only on this short ground and the matter is sent back to the appellate authority to reconsider the appeal on merits. It will be open for the appellate authority to decide whether such appeal is maintainable or not in law. The appellate authority shall accordingly decide the appeal in accordance with law.

This petition is allowed mainly on the ground that the appeal was rejected on the ground of limitation. The appellate authority may take appropriate decision on the appeal of the petitioner on merits, as stated above, and in accordance with law, as early as possible, preferably within a period of three months from the date of receipt of the writ of this Court.

The petition is accordingly allowed. Rule is made absolute to the above extent, with no order as to costs.

8th March, 2002 (P.B. Majmudar, J.)

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(apj)